

Claimant, a truck driver for the respondent, was hauling a load to respondent's plant in New Mexico when he encountered a picket line indicating the employees of that plant were on strike. After contacting his dispatcher and being assured that the situation was not volatile, claimant crossed the picket line, backing his truck up to the plant dock and allowing the dock workers to unload. While the unloading was ongoing claimant climbed into the cab of his truck and went to sleep. At approximately 9:30 P.M. on April 13, 1994, several bullets were fired at claimant's cab, striking his truck and shattering the glass in the windshield. Claimant was showered with glass. Shortly thereafter, during the police

investigation of the incident, claimant was asked whether he had suffered any injuries. He advised the local police that he had suffered no injuries, and sought no medical care at that time.

On January 20, 1995, a benefit review conference was held. At that time claimant alleged his windshield had been shattered and he had been showered with glass. There was no indication claimant suffered any physical injuries at the time of the incident. Claimant alleged flashbacks and other psychological problems resulting from the incident.

Not until the preliminary hearing of February 27, 1995, did claimant allege he had actually been cut by the glass. Again it is noted that claimant sought no medical treatment for any of these alleged injuries.

In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501. Burden of proof means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record. K.S.A. 44-508(g); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

In order for claimant to be eligible for workers compensation benefits, claimant must have suffered personal injury by accident arising out of and in the course of claimant's employment. K.S.A. 44-501(a). Personal injury is defined in K.S.A. 44-508(e) as follows:

“‘Personal injury’ and ‘injury’ mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence.”

Claimant has provided no evidence other than his delayed testimony at preliminary hearing that he suffered any type of physical injury on the date of the shooting incident. The claimant sought no medical care, reported no injury to the police and alleged no injury at the benefit review conference. The Appeals Board finds, based upon a preponderance of the credible evidence, that claimant has failed to prove personal injury suffered on April 13, 1994 as a result of the above-described incident.

Claimant contends his psychological trauma stems from the April 13, 1994 incident.

In order for a claim for traumatic neurosis or psychological injury to be compensable claimant must prove (1) a work-related physical injury; (2) symptoms of traumatic neurosis; and (3) that the neurosis was directly traceable to the physical injury. Love v. McDonald's Restaurant, 13 Kan. App. 2d 397, 771 P.2d 557, (1989) rev. den. In Followill v. Emerson Electric Co., 234 Kan. 791, 674 P.2d 1050, (1984), the Kansas Supreme Court was asked to decide whether psychological trauma absent physical injury was compensable in Kansas. The Court rejected this contention finding that in accordance with an unbroken line of workers compensation cases in Kansas, the obligation of an employer under K.S.A. 44-501 does not extend to mental disorders or injuries unless the mental problems stem from an actual physical injury to the claimant.

In following this line of cases the Appeals Board finds claimant's psychological trauma has not been shown to stem from a physical injury and as such claimant is not entitled to compensation therefrom.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated March 2, 1995, shall be and is hereby reversed and claimant is denied compensation and treatment from the accident of April 13, 1994.

IT IS SO ORDERED.

Dated this ____ day of June, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard E. Jones, Topeka, Kansas
 Matthew W. Tills, Kansas City, Missouri
 Floyd V. Palmer, Administrative Law Judge
 George Gomez, Director